



King County

Metropolitan King County Council Committee of the Whole

Agenda Item No.: 6

Date: May 5, 2008

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Briefing No.: 2008-0226

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REVISED STAFF REPORT

Proposed Ordinance 2008-0226 was reported out of Committee of the Whole on May 5, 2008 without recommendation due to technical changes that needed to be made to the striker, which is described on pages 6-7.

SUBJECT: Proposed Ordinance 2008-0226 regarding King County's potential acquisition of a 26-mile easement within the Eastside Rail Corridor (ERC), which the Port of Seattle would acquire from the Burlington Northern Santa Fe Railway Company (BNSF). Striking and title amendments have been drafted, declaring an emergency.

KEY ELEMENTS

- The Port of Seattle acquires BNSF's Eastside Rail Corridor for \$107 million and secures it for public ownership.
- The northern portion of the corridor remains in active freight, and the southern portion of the corridor and the Redmond Spur will be railbanked under federal law.
- King County would serve as Interim Trail User for federal railbanking purposes. To satisfy railbanking requirements, an Interim Trail User must (among other things) have the ability and intent to develop a contiguous trail through the full railbanked corridor; and ensure that sufficient property interests exist or can be acquired to allow the restoration of freight rail service over the railbanked corridor.
- The County pays the Port \$1.9 million at the time of closing for a multipurpose public trail easement.
- Port-County agreements provide for dual transportation and trail use of the railbanked corridor.
- A multi-agency, regional process would inform a joint determination by the Port and County on appropriate uses of the railbanked property, including the location and size of trail.
- The County and Port will jointly agree on the location and size of trail and the timing of trail development.

- A dispute resolution process including mediation.
- Agreements apportion risks related to hazardous materials among BNSF, the Port, and the County.
- The County has the right of first refusal to purchase from BNSF Milepost 0 to Milepost 5 (the Renton Corridor) – this right would expire on December 29, 2013.
- The County has a first right to acquire any, or all, of the corridor that the Port seeks to sell. If the County does not exercise its right to acquire a portion offered for sale, any public agency in the state authorized to provide transit, rail services, or public trails may exercise a right to acquire that portion of the corridor. If no such public agency acts, then the Port may sell to the purchaser of its choice.
- By July 1, 2008, the Port and County may agree to allow the County to purchase the segments of the corridor from Milepost 5 in Renton to Milepost 11.8 in Bellevue, and/or the Redmond Spur.

BACKGROUND

The County and Port have worked to acquire the Eastside Rail Corridor since 2004. In the current proposal, the Port of Seattle would purchase from BNSF a rail corridor known as the Woodinville Subdivision, and King County would purchase from the Port an approximately 26-mile easement within the corridor for trail purposes. The County would serve as the Interim Trail User to carry out federal railbanking obligations. (Note that the corridor runs all the way to Snohomish County, but railbanking and the easement cover only the portion running from Renton to Woodinville, plus the Redmond Spur. Freight service will continue to run on the northern segment not covered by the easement.)

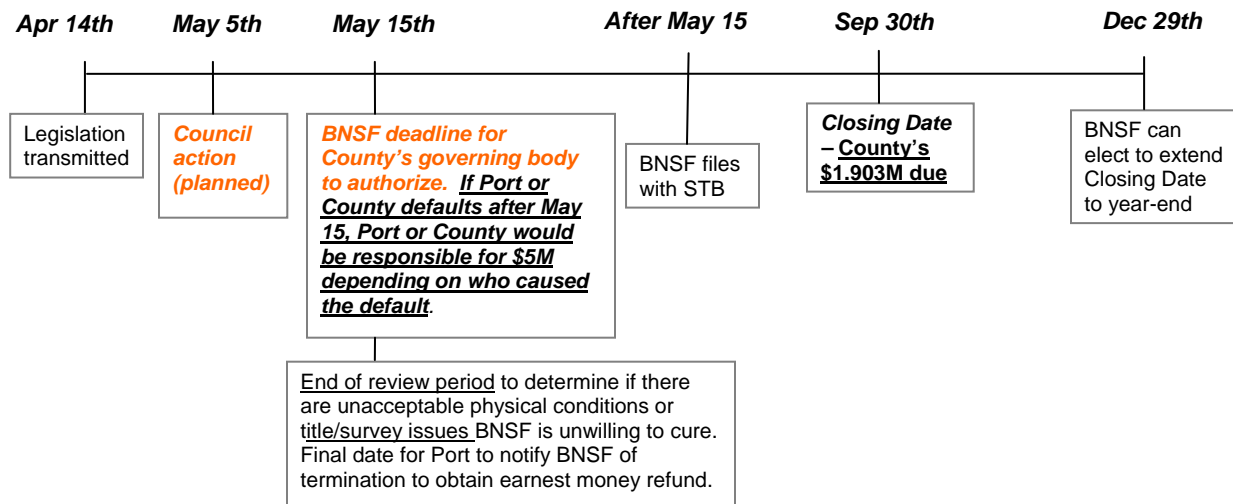
On April 14th, the Executive transmitted the following primary documents related to the Burlington Northern Santa Fe (BNSF) transaction:

1. Purchase and Sale Agreement (with numerous attachments)
2. Interlocal Agreement
3. Easement
4. Donation Agreement
5. Trail Use Agreement

Staff's analysis of these documents begins on Page 3 of this staff report.

As noted in prior staff reports, executive staff negotiated with BNSF to extend until May 15th the deadline for Council to approve the transaction. This date, along with other key dates, is shown in Exhibit 1 below.

Exhibit 1 Overview of Transaction Timeframe



As shown in Exhibit 1, Council action on May 5th is needed in order to meet BNSF's May 15th deadline for the County's governing body to approve the transaction. At the direction of Council, staff has prepared emergency legislation to ensure that the County meets BNSF's deadline.

Note that if the Council and the Port approve the transaction by May 15th, a subsequent material default by the County or the Port prior to closing would result in the Port losing \$5 million in earnest money. Per the Interlocal Agreement between the County and the Port, the County would be responsible to cover this cost if the County defaults. Another key date is the anticipated closing date of September 30th, when the County's \$1.903 million contribution would be due.

ANALYSIS

This staff report focuses on summarizing the key changes to the easement and interlocal agreements since the Executive transmitted his proposed legislation on April 14th.

Multi-agency Regional Process

Councilmembers expressed concerns regarding the lack of specificity on the process design, participants, and timeframe. As noted in previous staff reports, an April 23rd letter from the President of the Port Commission and the Port's Chief Executive Officer states:

We have begun discussions with communities along the corridor in both King and Snohomish counties. The Eastside Partnership, which has membership throughout the corridor including King County Council members, could also be a venue for public input about future uses. Further, the Legislature has mandated the PSRC [Puget Sound Regional Council] and Sound Transit [to] conduct a study this year of the feasibility of commuter rail operations between King and Snohomish County. The Port also expects that the County's trail planning would involve a wide range of stakeholders throughout the community.

No changes have been made to the easement or interlocal agreement to formalize the process design, participants, or timeframe. However, the striking amendment addresses some of these concerns by requiring that County assent to a future agreement between the County and the Port on the essential elements of the regional process, including the timeframe, participants, and resources to be provided by each agency, shall be authorized by ordinance. The striking amendment also states the County's intent to negotiate such an agreement and to enact such an ordinance no later than July 15, 2008.

Joint Determination of Trail Area Size and Location

The transmitted easement stated that the Port and County would jointly determine the appropriate location and size of the Trail Area, after the completion of and in consideration of the recommendations of the Regional Process. However, a timeframe for the joint determination was not specified.

Under the current negotiated language, the County may initiate negotiation on the trail area size and location upon either completion of the Regional Process or one year after Closing, whichever is earlier. The parties would then have 18 months to reach a joint determination. If a joint determination is not reached within 18 months, either party may start dispute resolution.

Key Provision: Easement Section 2.1.1

County Right to Terminate Easement

A new provision has been added that creates a "window" in time when the County could elect to forgo Trail Development and to terminate the easement and the interlocal agreement. This "window" would open at the end of the joint determination process, or the end of the 18-month period for the joint determination process, whichever occurs earlier; and the window would close no later than five years after Closing. If the County chooses to terminate the easement and interlocal during this "window," then the Port may find a substitute Interim Trail User. The Port would pay the County for its Easement rights at the original purchase price of \$1.903 million.

The purpose of this provision is to allow the Port and the County the opportunity to consider renegotiating key elements of the easement and agreements if the County

believes this is necessary after more information about the corridor and trail has been developed through the Regional Process and the joint determination process. The County would evaluate the success of such negotiations before deciding whether to terminate the easement and agreement under Section 2.1.2.

Key Provision: Easement Section 2.1.2

Conflicts Between Trail and Rail-based Transportation Use

The primary change since the Executive transmitted his proposed legislation has been to shift the cost associated with trail relocation to the County in the event of a conflict between the trail area and a rail-based transportation use. The transmitted agreements called for the Port or third-party operator to assume these costs whether the trail was relocated within the property or outside the property. The Port has expressed the position that such costs must be the obligation of the County. As a result of further negotiations with the Port, the easement now states that the County will pay for these costs.

Any interference between rail use and trail development in the trail area would require the Port and County to jointly determine a new trail area. At least 120 days before the Port could take any action that would require a joint determination, it would be required to initiate negotiation of the determination through written notice to the County. Thereafter, the parties would have 120 days to negotiate and reach the joint determination, or begin dispute resolution. The Port or third-party operator may begin changes after the 120-day joint determination period, even if the joint determination is still pending.

Per the currently negotiated easement terms, the County could relocate its trail within the property consistent with the standards set forth in Easement Section 2.1.1 (trail area shall generally range from 10 to 30 feet); but if it is not practicable to meet those standards then at a minimum the replacement trail would meet railbanking obligations, and the parties would make good faith efforts to accommodate a trail area of no less than ten feet in width. In the event that no reasonably practicable alternative for substantial trail relocation was available within the property, the County would bear the cost if it chose to relocate some trail facilities off the property. In the event the trail must be relocated off the corridor provisions of the agreements ensure that railbanking obligations remain satisfied.

Key provision: Easement Section 2.2.2

Staff Follow-up Item Regarding Pinch Points:

At the direction of the committee, Council staff has continued to obtain information on potential rail-trail conflict areas colloquially referred to as “pinch points.” The types of pinch points that have been identified and the estimated number of such pinch points are as follows:

- Narrow right-of-way (50 feet or less) – 10 locations;

- Topographical constraints (e.g., steep slopes or drop-offs near the rails) – 21 locations; and
- Rail bridges – 19 locations.

At each of these locations, corridor limitations may make it desirable to detour certain trail facilities onto nearby existing trails or roadways rather than develop them on that portion of the corridor, where they might conflict with rail use.

At the request of council staff, executive staff have prepared a map showing the location of what executive staff consider to be the highest priority pinch points (the right-of-way pinch points) along the rail corridor, together with the nearby trails that might be used as detours. Executive staff have also produced a set of close-up images of those locations. Neither the map nor the close-up images show proposed detour routes. According to executive staff, they have not yet begun the process of determining the routes of trail detours.

The map and close-up images prepared by executive staff are included in Councilmembers' packets. If Councilmembers wish to discuss these potential conflict areas further, staff can walk through the information contained in the map and other images.

STRIKER

At the direction of Councilmembers, staff has prepared a striking amendment and a title amendment. The amendments declare an emergency in order to meet BNSF's May 15th deadline to have an effective ordinance authorizing the Executive to enter into the agreements with BNSF and the Port. Other key elements of the striker include:

1) Council shall authorize by ordinance three key joint determinations between the County and the Port. These determinations are as follows:

- Regional Process timeframe, participants, and resources to be provided by each agency – the striker also states that the County's intent is to develop the process and to pass an ordinance authorizing County agreement to that process by July 15th.
- Initial determination of the size and location of the trail area; and
- Timeline for trail development.

2) Requirement that the Executive provide quarterly reports to the Council on proposed trail relocations or realignments.

3) Statement that it is the intent of the County to consider seeking to renegotiate the easement with the Port during the "window" following the Regional Process, particularly regarding the allocation of Trail Area relocation costs under Section 2.2.2. See above discussion of County right to terminate easement.

4) Statement that the Council wishes to consider other potential funding sources that may not carry the same conditions as Conservation Futures (CFT), and will explore and consider the use of other funding sources prior to closing.